

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Nos. CIV16-0594 JB/SMV
CR 05-0772 JB

DIONYSIUS SPENCER FOX,

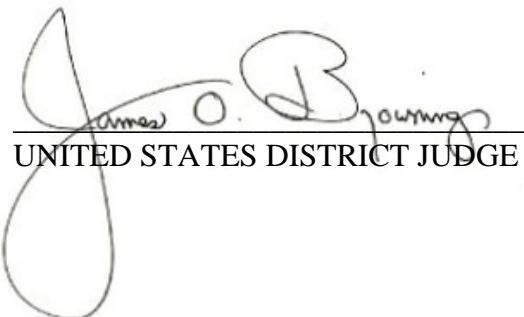
Defendant.

**MEMORANDUM OPINION AND ORDER GRANTING THE DEFENDANT'S MOTION
TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255**

THIS MATTER comes before the Court on the Defendant's Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255, filed June 16, 2016 (CIV Doc. 1; CR Doc. 159)(“Motion”).¹ In his Motion, Defendant Dionysius Spencer Fox asserts that he was unconstitutionally sentenced under the residual clause of the Armed Criminal Career Act, 18 U.S.C. § 924(e)(“ACCA”), which the Supreme Court of the United States, in Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015), held was unconstitutionally vague. Plaintiff United States of America responded on July 7, 2016. (CIV Doc. 6; CR Doc. 162). The Plaintiff agrees that Fox “is entitled to resentencing because, under current law, he no longer has three qualifying convictions supporting an enhanced statutory sentence under the ACCA.” (CIV Doc. 6, at 1; CR Doc. 162, at 1). Having considered the record in this and Fox’s underlying criminal case, the Court concludes that he is entitled to resentencing based on Johnson v. United States.

¹The United States Court of Appeals for the Tenth Circuit granted the Defendant authorization to file a second or successive § 2255 motion in this Court to raise a claim based on Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015). See Order of the United States Court of Appeals for the Tenth Circuit granting authorization to file second or successive § 2255 motion as to Dionysius Spencer Fox, filed May 13, 2016 (CR Doc. 157).

IT IS ORDERED that the Defendant's Motion under 28 U.S.C. § 2255 (CIV Doc. 1; CR Doc. 159) is granted, and the Defendant's sentence is vacated. The case will be set for resentencing in a forthcoming Order.



James O. Bownings
UNITED STATES DISTRICT JUDGE

Counsel:

Damon P. Martinez
United States Attorney
Holland S. Kastrin
Assistant United States Attorney
United States Attorney's Office
Albuquerque, New Mexico

Attorneys for the Plaintiff

Irma Rivas
Federal Public Defender
Office of the Federal Public Defender
Albuquerque, New Mexico

Attorney for the Defendant